Supreme Court, U.S.
FILED

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No.

In The
Supreme Court of the United States

Cyrus Y. Kim,

petitioner,

vs.

TARGA REAL ESTATE SERVICE, INC;
CITY OF FEDERAL WAY;
ABT TOWING OF FEDERAL WAY, INC,

respondents.

On Petition for Writ of Certiorari
to United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioner
Cyrus Y. Kim Pro Se
1807S. 308th CT. #11
Federal Way, WA 98003
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Questions presented for review

1. Is a Municipal Court's judgment—a tenant's car parked in the tenant's apartment parking lot was an abandoned car—a private individual's act or a state action?

2. Is the federal cause of action under Fourteenth Amendment the same as the federal cause of action under 42 U.S.C. §1983?

3. Is a state statute, RCW §4.16.080(2), the Congress' authorized legislation to enforce the limitation of the civil action for the case under Fourteenth Amendment by the section 5 of Fourteenth Amendment?

4. Is U.S. court's dismissal completely disregarded the key or important federal question on the wrong cause of action and by the unauthorized state statute right decision?

A list of all parties

Petitioner:

Cyrus Y. Kim Pro Se
1807 S. 308th St. CT. #11
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Respondents:

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923 F.2d 758, 760 (9th Cir. 1991).....7, 8

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I. OPINIONS BELOW

U.S. Appeals Court's order denied petition for rehearing en banc on December 14, 2009 is reprinted on p. 11.

U.S. Appeals Court's order affirmed district court's judgment rendered on August 19, 2009 is reprinted on p. 11.

U.S. district court's order denying motion for reconsideration rendered on January 7, 2009 is reprinted on p. 13.

U.S. district court's order dismissing complaint with prejudice rendered on December 31, 2008 is reprinted on p.14.

II. JURISDICTION

(A) Jurisdiction is conferred upon the Court by 28 U.S.C. §1331 and §1367.

(B) On December 14, 2009, U.S. appeals court denied petition for rehearing en banc. A writ of certiorari filing on February 4, 2010 is timeliness, because it is less than 60 days.

III. STATEMENT OF CASE

A. Facts

1. Targa's wrongful acts

A tenant, Kim, of an apartment under the lease agreement with Zaran Sayre & Associates, Inc. ("Zaran") had been parking two cars in the same apartment parking lot. One car's vehicle tab was expired earlier and another car's tab was expired just a week ago. The manager of Zaran allowed to park

the cars with the expired car tabs, but recommended to move the cars to other parking spaces once a month.

Targa Real Estate Service, Inc. ("Targa") took over the management from Zaran around the end of October 2000. On October 28, 2000, without a warning notice, the Targa property manager and the resident manager authorized Defendant ABT Towing of Federal Way, Inc. ("ABT") to impound Kim's one car—the car tab was expired just a week or so—under the lease agreement with Zaran. It was an unauthorized impounding, because the lease agreement between Targa and Kim's mother and Kim started on November 3, 2000.

Later, Targa's act of impounding without a warning notice under Zaran's lease agreement involves in the municipal court's judgment as an abandoned car, and right after the judgment as abandoned car, Targa's managers ordered to remove another car with the expired car tab but good running car out of apartment parking lot. So, Kim got lost two cars by Targa's acts and the judgment as abandoned car.

2. Municipal court's judgment.

a. judgment as abandoned car

A municipal court judge ordered to pay $570 for storage fee, ruling that the tenant's car parked in the tenant's apartment parking lot was an abandoned car.

If the municipal court judge made an order to return that car to the owner and for Targa to pay the storage fee under the ruling that the tenant's car was not abandoned car, there would be no problems at

all.

b. The judgment constitutes state action.

In *M.L.B. v. S.L.J.*, the Supreme Court ruled the actions of, and processes used by, state and federal courts constitute "state action" as below:

> In *M.L.B. v. S.L.J.* (519 U.S. 102, 116 n. 8, 117 S.Ct. 555, 564 n. 8, 136 L.Ed.2d 473 (1996)), the Court found that a civil proceeding in a state court initiated by a husband to terminate the parental rights of his former spouse, as a prelude to an adoption petition by his new spouse, involved "state action."

So, the municipal court's judgment constitutes state action and the state action becomes the state action of the City of Federal Way ("City") who hired the judge for more than 15 years without election and to which sovereign immunity is inapplicable. So, the City becomes responsible and liable for the deprivation of properties without due process of law by the state action which must be scrutinized under due process clause of Fourteenth Amendment.

3. ABT's wrongful acts

Kim, at the time as a full time student of University of Washington, was under severe financial difficulty. During that time, without a notice to Kim, ABT towing of Federal Way, Inc. ("ABT"), under the judgment as an abandoned car, dumped all personal properties including a valuable picture negative album of more than 3,000 negatives with copyright collected during more than ten-year

photo studio business, which was left in the car trunk impounded without a warning notice after having printed several pictures before the car's tab was expired, and sold that car by the auction.

The impounding of the car without a warning notice, the dumping of the picture negative album, and the selling of the car by the auction were not under Kim's control.

B. Cause of action

This case is for a federal cause of action under Fourteenth Amendment against the City's state action, which allegedly violated Article VI[2] and due process clause of Fourteenth Amendment, challenging the constitutionality of the state action and claiming damages for the lost properties without due process of law by the state action and for the mental distress inflicted by extremely outrageous unconstitutional state action and Targa's and ABT's wrongful acts.

Key defendant under the federal question is the City, but Targa and ABT were the defendants without federal question for the claimed damages caused by their wrongful acts under the supplementary jurisdiction by 28 U.S.C. §1367, because Targa and ABT didn't violate the Constitution, laws, or treaties of United States and the claiming damages were based on the state torts law.

C. U.S. district court's judgment completely disregarded the key federal question on the wrong cause of action and by the unauthorized state statute.

Confusing the federal cause of action under Fourteenth Amendment of this case with the claiming damages under state torts law and without distinguishing whether or not RCW §4.16.080 is the Congress' appropriate legislation to enforce the limitation of the civil action for the case under Fourteenth Amendment by §5 of Fourteenth Amendment, U.S. district court dismissed this case pursuant to state statute RCW §4.16.080(2) for three-year limitation of an action as below (p. 16):

> Whether his claims are based on a civil right violation pursuant to 42 U.S.C. §1983 or state-law claims for negligence or an intentional tort pursuant to RCW §4.16.080, the applicable statute of limitation is three years from the date the cause of action accrued...

In this case, there are no claims based on a civil right violation pursuant to 42 U.S.C. §1983 and no claims pursuant to RCW §4.16.080 and the applicable statute of the three-year limitation of action, RCW §4.16.080(2) is a state statute of the Revised Code of Washington but is not the Congress' appropriate legislation to enforce Fourteenth Amendment, such as the limitation of action for the deprivation of property without due process of law by the state action, because the section 5 of Fourteenth Amendment requires the Congress' appropriate legislation to enforce Fourteenth Amendment as below:

> Amendment XIV [1868]
> Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Therefore, U.S. district court dismissed the case for Targa's wrongful acts—wrong cause of action—and by the unauthorized state statute RCW §4.16.080(2). The cause of action of this case is the federal cause of action under Fourteenth Amendment against the City's state action, the judgment, but Targa and ABT are defendants only for the claiming damages caused by their wrongful acts under supplementary jurisdiction pursuant to 28 U.S.C. §1367.

Naturally, in the U.S. district court's judgment, there was no word for the key federal question of whether or not the deprivation of properties without due process of law by the municipal court's state action is constitutional. Hence, U.S. district court completely disregarded the key or important federal question and dismissed this case on the wrong cause of action for Targa without federal question by the unauthorized state statute.

> RCW §4.16.080 Actions limited to three years:
> (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

There is no distinct reason RCW §4.16.080(2) is inevitably applied to this case, because there is RCW §4.16.020(2), which does not harm or oppose the ten-year possession right of properties the Fourteenth Amendment protects and can be applied to the judgment.

In the motion for reconsideration, Kim indicated RCW §4.16.020(2), However, U.S. district court denied it for the reason as (a) and (b) on p. 13.

> RCW 4.16.020 Actions to be commenced within ten years – Exception
> The period prescribed for the commencement of actions shall be as follows: Within ten years:
>
> (2) For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended under RCW 6.17.020 or a similar provision in another jurisdiction.

D. U.S. appeals court's affirmed judgment completely disregarded the key federal question on the fabricated cause of action and by the unauthorized state statute.

U.S. appeals court affirmed for 42 U.S.C. §1983 action by RCW §4.16.080(2) as below:

> Cyrus Yoo Kim appeals pro se from the district court's judgment dismissing his 42 U.S.C. §1983 action challenging the impounding of his car...
> We review de novo... We affirm.
> The district court properly dismissed Kim's action because it was filed well after the applicable three-year statute of limitation had expired. *See Bagley v. CMC Real Estate Corp.*, 923 F.2d 758,

760 (9th Cir. 1991)... We affirmed.

However, this case is not the 42 U.S.C. §1983 action but the federal cause of action under Fourteenth Amendment for the deprivation of property without due process of law by the City's state action which allegedly violated Article VI[2] and the due process clause.

Clearly, 42 U.S.C. §1983 is U.S. statute for the deprivation or violation of civil right. Clearly, "the impounding of his car" is the impounding of the property, but not impounding of the civil right. So, "42 U.S.C. §1983 action challenging the impounding of his car" was U.S. appeals court three judges' forcibly made federal cause of action for 42 U.S.C. §1983.

Accordingly, citing wrong and unrelated case of *Bagley v. CMC Real Estate Corp.*, which is not fit for the deprivation of properties without due process of law by the state action, but is fit for Targa's wrongful acts which cannot make federal question, and forcibly making the federal cause of action under Fourteenth Amendment the cause of 42 U.S.C. §1983 action for the Targa's wrongful acts, appeals court three judges completely disregarded key federal question and RCW §4.16.020(2) which is applicable to the judgment and affirmed pursuant to the unauthorized state statute RCW §4.16.080(2) under the reasoning as:

> The district court did not abuse its discretion by denying Kim's motion for reconsideration because Kim did not identify any new evidence, change in law, clear error, or manifest injustice...

IV. ARGUMENT

A. Violation of Article VI[2] and due process clause of Fourteenth Amendment

Clearly, the municipal court's judgment as abandoned car violated Article VI[2] and due process clause by the state action:

> Article VI[2]
> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The existing of appealing systems does not mean to allow the City judge's violation Article VI[2] and due process clause of Fourteenth Amendment by the state action.

B. Deprivation of the properties by the judgment must be scrutinized under due process clause of Fourteenth Amendment.

The judgment as abandoned car entangles two good running cars registered by state vehicle law and the picture negative album of more than 3,000 negative with copy right in the deprivation of properties without due process of law by the state action. So, the deprivation of two cars and the picture negative album caused by the judgment as abandoned car must be scrutinized under due process clause of Fourteenth Amendment.

C. Disregarded important federal question

There is no limitation of action for the deprivation of property without due process of law in Fourteenth Amendment, and the state statute, RCW 4.16.080(2), is not the Congress' authorized statute by §5 of Fourteenth Amendment to enforce the limitation of civil action upon the deprivation of properties by a state action. There is an applicable RCW 4.16.020(2) to the judgment, which does not harm or oppose the possession right of properties the Fourteenth Amendment protects. Both courts disregarded it as if RCW 4.16.080(2) were an inevitable state statute to apply to this case and then dismissed the case for the federal cause of action under Fourteenth Amendment on the wrong cause of action for Targa's wrongful acts, which cannot make federal question, by the unauthorized state statute. Therefore, both courts **completely disregarded the key or important federal question** of whether or not the municipal court's judgment as abandoned car, which was entangled in the deprivation of two cars and picture negative album, violated due process clause of Fourteenth Amendment by state action.

V. CONCLUSION

For the reasons above, petitioner respectfully request that this Court grant review for this petition.

Respectfully submitted,

Cyrus Y. Kim pro se.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYRUS Y. KIM, Plaintiff - Appellant, v. TARGA REAL ESTATE SERVICE, INC; et al., Defendant - Appellees.	No. 09-35054 DC No. 2:08-cv-1617-JLR Western District of Washington ORDER

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit judges

The full court has been advised or the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Kim's petition for rehearing en banc is denied. No further filings shall be accepted in this case.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYRUS Y. KIM, Plaintiff - Appellant, v. TARGA REAL ESTATE SERVICE, INC; et al., Defendant - Appellees.	No. 09-35054 D.C. No. 2:08-cv-1617-JLR MEMORANDOM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit judges.

Cyrus Yoo Kim appeals pro se from the district court's judgment dismissing his 42 U.S.C. §1983 action challenging the impounding of his car. We have jurisdiction under 28 U.S.C. §1291. We review de novo. *Canatella v. Van De Kamp*, 486 F.3d 1128, 1132 (9th Cir. 2007). We affirm.

The district court properly dismissed Kim's action because it was filed well after the applicable three-year statute of limitation had expired. *See Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991) (explaining that the statute of limitations for a §1983 action filed in Washington "is the three-year limitation of Wash. Rev. Code 4.16.080(2)").

The district court did not abuse its discretion by denying Kim's motion for reconsideration because Kim did not identify any new evidence, change in law, clear error, or manifest injustice. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (reviewing district court's denial of a motion to reconsider for an abuse of discretion and setting forth requirements for

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** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App P. 34(a)(2).

reconsideration).

AFFIRMED.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYRUS Y. KIM, Plaintiff, v. TARGA REAL ESTATE SERVICE, INC; et al., Defendants.	NO. C08-1617-JLR ORDER DENYING MOTION FOR RECONSIDERATION

Before the court is Plaintiff Cyrus Y. Kim's motion for reconsideration (Dkt. #13). Mr. Kim requests that the court reconsider its order dismissing his complaint with prejudice because it was filed after the expiration of the applicable statute of limitation. Pursuant to Local Rule W.D. Wash. CR 7(h)(1), motion for reconsideration are disfavored, and will ordinarily de denied unless there is a showing of (a) manifest error in the prior ruling, or (b) facts or legal authority which could not have been brought to the attention of the court earlier, through reasonable diligence. Because Mr. Kim has not made either showing with regard to the court's ruling on this issue, his motion (Dkt. # 13) is DENIED.

Dated this 7th day of January, 2009.

s/ JAMES L. ROBART
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYRUS Y. KIM, Plaintiff, v. TARGA REAL ESTATE SERVICE, INC; et al., Defendant - Appellees.	NO. C08-1617JLR ORDER DISMISSING COMPLAINT WITH PREJUDICE

I. INTRODUCTION

Before the court is a motion to dismiss (Dkt. # 6) filed by Defendant City of Federal Way ("Federal Way") and s motion for summary judgment (Dkt. # 8) filed by Targa Real Estate Service, Inc. ("Targa Real Estate Service"). Both motions seek to dismiss Mr. Kim's complaint on the basis that Mr. Kim's claims are barred by applicable statute of limitations. The court has reviewed the motions and Mr. Kim's response thereto. For the following reasons, the court GRANTS the motions (Dkt ## 6 and 8) and DIDMISSES Mr. Kim's complaint with prejudice. Mr. Kim's failure to file his claims within the applicable time period is a defect that cannot be cured by amending his complaint. Accordingly, the court finds that amendment would be futile in this case.

II. BACKGROUND & ANALYSISS

Mr. Kim filed this action on November 5, 2008. (Compl. (Dkt. # 1). Mr. Kim alleges that in late 2000, he was a tenant in an apartment building managed by Zaran Sayre & Associates, Inc. ("Zaran"). (*Id.* at 2.) During 2000, according to the complaint, Zaran permitted Mr. Kim to park his vehicle , exhibiting expired license vehicle tabs, in the adjacent apartment parking lot. (*Id.*) When Defendant Targa Real Estate Services took over property management of Mr. Kim's apartment building in or about October 2000, it entered into a new lease agreement with Mr. Kim and his mother. (Id.) Targa Real Estate Service did not honor the alleged agreement that Zaran had entered into with Mr. Kim regarding his vehicle and , on October 28, 2000, Targa Real Estate Services hired Defendant ABT Towing to impound Mr. Kim's vehicle. (*Id.*)

Mr. Kim alleges that he was not given a warning notice before his car was impounded and that, after impounding the vehicle, ABT Towing dumped all of Mr. Kim's belongings from the car also without giving him notice. (*Id.* at 3.) Mr. Kim alleges that these belongings included a "very precious picture negative album keeping more than thee thousands negatives with copy right, which were collected during [Mr.] Kim's ten-year photo studio business." (*Id.*) Mr. Kim's complaint vaguely accuses Defendant of violating various state and federal tort laws arising out of their involvement in the impoundment of his vehicle that occurred eight years prior to the filing of this complaint. Mr. Kim claims damages in excess of $500,000. (*Id.*)

Although Mr. Kim's complaint fails to identify the type of tort claims asserted against each Defendant, the court concludes that none of Mr. Kim's claims

can survive a motion to dismiss based on his failure to file his complaint timely. **Whether his claims are based on a civil right violation pursuant to 42 U.S.C. §1983 or state-law claims for negligence or an intentional tort pursuant to RCW §4.16.080, the applicable statute of limitation is three years from the date the cause of action accrued**. In this case, Mr. Kim's cause of action accrued, at the latest, on November 16, 2000, the date that the Federal Way Municipal Court issued a judgment of impoundment and ordered Mr. Kim to pay the applicable storage fees for his vehicle. (Compl., EX. 3.) Under no set of circumstances could Mr. Kim's November 5, 2008 filing of this complaint be considered timely.[1] Accordingly, the court dismiss Mr. Kim's complaint.

III. CONCLUSION

For the above reasons, the court GRANTS the motions (Dkt. ## 6, 8) and DISMISSES Mr. Kim's complaint with prejudice.

Dated this 31st day of December 2008.

/s/ JAMES L. ROBART
United States District
Judge

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[1] This court notes that even if Mr. Kim's complaint could be read to include a claim for breach of contract under state law, the applicable statute of limitations is six years. See RCW 4.16.040(1). A contract claims by Mr. Kim, filed eight years after the incident, would still not be timely.